HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1244 of 2003

Gurkmukh Singh (Petitioner)

Versus.

Civil Judge, (JD) Dehradun & others. (Respondents)

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1244 of 2003 (M/S)

Gurmukh Singh .... Petitioner

Versus

Civil Judge (JD) Dehradun & others .... Respondents

Sri Ram ji Srivastava, Advocate for the petitioner.
Sri Gopal Narain, Advocate for the respondents.

Dated: 20.8.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner have prayed for a the writ of certiorari quashing the order dted 1.2.2003 annexure - 7 to the writ petition, passed by the Civil Judge (JD), Dehradun.

Briefly stated the facts giving rise to the present writ petition are that the petitioner filed a suit No. 279 of 2001 Gurumukh Singh vs. Jagat Singh and others in the Court of Civil Judge (JD) Dehradun for permanent injunction against the respondents no. 2 to 6, restraining them not to interfere in possession of the petitioner over the land in suit. Along with the plaint the petitioner has also filed an application under Order 39 rule 1 for ad interim injunction which was allowed vide order 12.10.2001 and directed the parties to maintain status quo over the land in dispute. Thereafter on 24.10.2001 respondents no. 2 to 6 filed an application under Order 1 rule 8

C.P.C. for defending the suit on behalf of all the residence of village Barotwala, Pargana Pachhwadoon, Tehsil Vikas Nagar, District Dehradun in representative capacity. The Civil Judge (JD) fixed 13.11.2001 for objection and decision on the application filed on behalf of respondent no.2 to 6 under Order 1 Rule 8 C.P.C. Against said order respondents no. 2 to 6 filed a revision which was allowed by the Additional district Judge vide order dted 19.10.2001 and the trial Court was directed to dispose of the application in accordance with law. The learned Civil Judge (JD) allowed the application under Order 1 rule 8 C.P.C. vide order dted 1.12.2003, against which the present writ petition has been preferred.

Oder 1 Rule 8 provides as under:

"8. One person may sue or defend on behalf of all in same interest- (1) *where there are numerous persons having the same interest in one suit-*

(a) One or more of such persons may, within the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested:

(b) The Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, al persons so interested.

(2*) The court shall, in every case where a permission or direction is given under sub rule (1) at the plaintiffs expenses, give notice of the institution of the suit to all persons so interested either by personal service, or where, by reason of the number of persons or any other cause, such service is not*

reasonably practicable, by public advertisement as the Court in each case may direct.

(3) Any person on whose behalf, o for whose benefit, a suit is instituted or defended, under sub Rule (1) may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub rule (1) an no such suit shall be withdrawn under sub rule (3) of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that order, unless the Court has given at the plaintiffs expense, notice to all persons so interested in the manner specified in sub rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Corot may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted or defended as the case may be.

Explanation-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

As will appear from the aforesaid provision of law the learned civil Judge (JD) has to satisfy himself before passing the order under O. 1 R. 8 C.P.C. with regard to the ingredients contained therein. It is also a matter of concerned that the learned Civil Judge (JD) while passing order has to record

reasons. The Apex Court in 2004 (5) SCC 570 has held as under:

"Even in respect of administrative orders Lordl Denning M.R. in Breen v. Amalgamater Engg. Union (1971) 1 All, ER 1148 observed "The giving of reasons is one of the fundamentals of good administration" In Alexander Machinery (Dudley) Ltd. vs. Crabtree 1974 ICR 120 (NIRC), it was observed: "Failure to give reasons amounts to denial of justice" "Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi judicial performance."

Since the trial Court has not given reasons for impleading the respondents no.2 to 6 in a representative capacity under O. 1 R.8 C.P.C. the impugned order passed by the trial Court on 1.12.2003 cannot be sustained.

In view of the above fact the writ petition is allowed. Impugned order dated 1.12.2003 passed by the Civil Judge (JD), Dehradun is set aside. The matter is remanded to the trial

Court for passing a reasoned order afresh in the light of the observation made above. No order as to costs.

(Rajesh Tandon J.)

20.8.2004
*Dhyani